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MINUTES
March 22, 2013

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:02 a.m., on Friday, March 22, 2013, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Marvin Miller, Heidi Kaiser, Larry Mires, and Robin Shropshire

Board Members Present via Telephone: Joe Whalen

Board Members Absent: Larry Anderson

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Misty Gable

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Deputy Director), Bonnie Lovelace, and Steve Kilbreath – Director's Office; John North, Carol Schmidt, David Dennis, Kirsten Bowers, Ed Hayes, and Norman Mullen – Legal; Judy Hanson – Permitting & Compliance Division; Paul Skubinna and Tom Reid – Water Protection Bureau; Eugene Pizzini – Public Water Supply & Subdivisions Bureau; David Klemp, Debra Wolfe, Whitney Walsh, Eric Merchant, Charles Homer, Julie Merkel, and Bob Habeck – Air Resources Management Bureau; John Arrigo and Daniel Kenney – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Paul Riley – Butte-Silver Bow Environmental Health Department; Mark Schaffer – Copper Environmental

- I.A.1 | Review and approve January 25, 2013, Board meeting minutes.
- Mr. Mires MOVED to approve the January 25, 2013, Board meeting minutes. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.
- II.A.1.a | In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta-Potty, Lake County, BER 2011-06 SDL. *(No discussion took place regarding this matter.)*
- II.A.1.b | In the matter of violations of the Montana Solid Waste Management Act by Valley County Refuse District #1 at the Valley County Landfill, Glasgow, BER 2012-06 SW. *(No discussion took place regarding this matter.)*
- II.A.1.c | In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS. *(No discussion took place regarding this matter.)*
- II.A.1.d | In the matter of violations of the Montana Solid Waste Management Act by Asphalt Plus, LLC, a corporation, and Michael C. and Melinda M. Oedekoven, as individuals, at 425 Johnson Lane, Billings, Yellowstone County, BER 2012-13 SW. *(No discussion took place regarding this matter.)*
- II.A.2.a | In the matter of the request for hearing by Hawthorne Springs Property Owners Association; H Lazy Heart, LLC; Patchy, Inc.; and other residents regarding Opencut Mining Permit No. 2258, issued to Farwest Rock Products, Missoula County, BER 2012-09 OC. *(No discussion took place regarding this matter.)*
- II.A.3.a | In the matter of the request for hearing by William E. Smith, on behalf of Mike Adkins, regarding Park County's denial to validate Adkins Class III Waste Tire Monofill License No. 517, BER 2012-05 SW.
- Ms. Orr said oral argument is scheduled for the petition for judicial review for April 10 or 11.
- II.A.3.b | In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ. *(No discussion took place regarding this matter.)*
- II.A.3.c | In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ.

II.A.3.d | In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.

Ms. Orr said both II.A.3.c and II.A.3.d have been set for hearing before the Board: Colstrip at the Board's December 6 meeting and JE Corette at the meeting in January 2014.

The Board discussed the date for the January meeting; Chairman Russell prefers January 17. Mr. Livers indicated staff would send a list of possible dates to Board members via email for their review.

II.B.1 | Briefing on Eastern Montana Issues Related to Oil and Gas

Mr. Kilbreath gave a Power Point presentation and discussed the impacts for oil development drilling predominantly in eastern Montana. Mr. Kilbreath answered questions from the Board.

III.A.1 | In the matter of Butte-Silver Bow County Outdoor Air Quality Regulations

Chairman Russell explained that the Board must hold a public hearing on the Butte-Silver Bow County outdoor air quality regulations. He took comment from proponents first.

Mr. Riley said the regulations were passed by the Butte-Silver Bow County Commission on April 18, 2012, and that the Walkerville Town Council also moved to develop the air quality regulations. He said they followed the procedures outlined in 75-2-301, MCA, and said a public hearing took place on February 22, 2012. Mr. Riley provided some details of the revised regulations. He noted that the Health Department and the Council went to great lengths to ensure that all citizens' comments and concerns were addressed through the public comment process.

There were no other proponents or opponents present, on the phone or in person, who chose to speak to the matter.

Chairman Russell called the hearing closed. Mr. Riley answered questions from Board members.

Chairman Russell called for a motion to authorize him to sign the order approving the regulations. Ms. Kaiser so **MOVED**. Mr. Mires **SECONDED** the motion. The motion **CARRIED** with a 6-0 vote.

III.B.1 In the matter of final adoption of the amendment of rules pertaining to concentrated animal feeding operations (CAFOs) and adoption of a new rule governing the application of manure, litter, and process wastewater at these facilities.

Mr. Reid said the primary reason for the amendments is to update the state regulations in order to maintain consistency with the federal regulations. He said the Board initiated rulemaking on December 7, 2012, a hearing was held on January 11, 2013, and the public comment period closed on January 22, 2013. He also said five comments were received and gave a brief summary of the comments. Mr. Reid responded to questions from the Board.

Chairman Russell asked if any members of the public wanted to comment on the matter. There was no response.

Chairman Russell called for a motion to adopt the rule as amended, accept the Presiding Officer's report, the House Bill 521 and 311 Analyses, and DEQ's response to comments. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion and it CARRIED with a unanimous vote.

III.C.1 In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC.

Ms. Orr briefed the Board regarding the case. There was discussion regarding the penalty and language changes to the order.

The Board agreed on specific language changes to add clarification to the order, and to extend the completion deadline to six months from the date the order is signed by the Board. Chairman Russell called for a motion to accept the changes. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED 5-1. Further discussion took place regarding the penalty.

Discussion took place regarding the penalty. Chairman Russell called for a motion to reduce the penalty to \$1,800 if all requirements are complied with. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a 5-0 vote. *(note: The teleconference connection with Mr. Whalen was lost at this point.)*

Chairman Russell called for a motion to authorize the Chair to sign the findings, conclusions of law, and order on completion by Ms. Orr. Mr. Mires so MOVED. Mr. Miller SECONDED the motion and it CARRIED with a 5-0 vote.

III.C.2 In the matter of violations of the Public Water Supply laws by the city of Ronan Public Water Supply System, PWSID #MT0000318, Ronan, Lake County, BER 2012-04 PWS.

Ms. Orr said she drafted a proposed order for the Board's signature adopting the recommended order on summary judgment. Mr. Livers confirmed the draft order was

included in the Board packets. Ms. Orr gave background on the case and recommended that the Board adopt the order.

Chairman Russell called for a motion for the Board to sign the order. Ms. Shropshire so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a 5-0 vote.

Discussion took place regarding the new surface water treatment rule. Mr. Pizzini gave background and answered questions from members of the Board.

(note: The connection with Mr. Whalen was restored.)

IV. General Public Comment

Chairman Russell asked if any member of the public was present who wanted to address the Board on matters that pertain to the Board. There was no response.

V. Adjournment

Chairman Russell called for a motion to adjourn. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. Chairman Russell thanked Mr. Miller for his time on the Board and his expertise (Mr. Miller is not seeking reappointment to the Board). The motion to adjourn CARRIED with a 6-0 vote.

The meeting adjourned at 12:09 p.m.

Board of Environmental Review March 22, 2013, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE